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WILL UEFA'S FINANCIAL FAIR PLAY HAVE ITS DAY IN COURT?

KEVIN MCCONNELL[†]

UEFA's new Financial Fair Play measures have been welcomed with open arms by some, while others have responded by questioning its legality. The new regulations are meant to protect creditors, players, tax collectors, and keep clubs from bankrupting themselves.¹ The new regulations have been hailed as a means for professional football to save itself from its financial decadence and become a viable business.² However, whether FFP can financially rescue football may hinge on a basic question: are its mandates legal?

Many of football's biggest clubs have cyclically spent beyond their means, running exorbitant losses, and taking loans to pay off existing loans.³ Clubs tend to dig themselves into financial holes with player salaries and transfers.⁴

Despite the apparent need for fiscal responsibility in football, UEFA President Michel Platini anticipates litigation brought by clubs who challenge the legal validity of FFP's sanctions.⁵ Second Tier English club West Ham United's current grievances pose a prime example of what could become a common challenge to FFP.⁶ West Ham alleges that FFP's introduction will penalize smaller clubs, who will be barred from spending and buying new players.⁷ This disparity in buying power will widen the gap between the Premier League and lower level clubs. The wealth disparity will also widen between the bigger leagues, such as the English, French, Spanish, and Italian leagues, and smaller leagues like the SPL and Austrian Bundesliga.⁸ The most likely legal argument against FFP is that its *de facto* transfer ban constitutes an undue restriction on trade—at least for clubs of EU member countries—as under EU law there is no exclusion for sports leagues.⁹

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¹ Leander Schaerlaeckens, *Will FFP Save Football from Itself?*, ESPN (Jan. 4, 2012), http://espn.go.com/sports/soccer/news/_id/7355528/soccer-financial-fair-play-end-football-reckless-spending.

² *Id.*

³ *Id.*

⁴ Ian Hawkey, *European Clubs Heed UEFA's Financial Fair Play Warning*, The National (Feb. 2, 2012), <http://www.thenational.ae/sport/football/european-clubs-heed-uefas-financial-fair-play-warning>.

⁵ *Id.*

⁶ Jason Burt, *West Ham Considering Legal Moves against Football League's Plans for Financial Fair Play Rules*, The Telegraph (Dec. 22, 2011), <http://www.telegraph.co.uk/sport/football/teams/west-ham/8974105/West-Ham-considering-legal-moves-against-Football-Leagues-plans-for-financial-fair-play-rules.html>.

⁷ *Id.*

⁸ *Id.*

⁹ Schaerlaeckens, *supra* note 1.

Until FFP is challenged in court or arbitration, the world can only speculate what the legal outcome will be, or whether the specter of litigation will curtail FFP's implementation.